

LEONARD E. SIMMONS

IBLA 73-164

Decided July 16, 1973

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer (NM 17251).

Affirmed.

Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals -- Regulations: Generally

An oil and gas lease offer filed under the simultaneous filing procedure in 43 CFR Subpart 3112, accompanied with a personal check for the advance rental payment, is properly rejected even though the offeror was the successful drawee in the drawing.

Oil and Gas Leases: Applications: Generally -- Regulations: Generally -- Regulations: Waiver

A departmental regulation promulgated pursuant to statutory authority has the force and effect of law. An application which does not comply with the clear and unequivocal requirements of the regulations must be rejected.

APPEARANCES: Leonard E. Simmons, pro se.

OPINION BY MRS. LEWIS

Leonard E. Simmons has appealed from a decision of the New Mexico State Office, Bureau of Land Management, dated October 18, 1972, which rejected his oil and gas drawing entry card lease offer for the reason that it was accompanied by an uncertified personal check for the advance rental payment.

The appellant's offer was filed for parcel No. 81, as identified in the September 1972 listing of lands available for simultaneous filings. It was successfully drawn for that parcel in the drawing held on October 12, 1972.

Appellant alleges he received the monthly listing of oil and gas lands available for simultaneous filing on the Saturday prior to Monday, September 25, 1972, when the simultaneous filing period concluded, and that it was not possible for him to obtain a proper remittance to submit the rental payment with his entry card. He suggests that he had submitted other simultaneous filings in earlier months, each accompanied by a personal check, but the State Office gave him no notice that such type of rental payment was unacceptable.

The list of lands prepared by the State Office clearly sets out that the drawing entry card must be accompanied by separate remittances for payment of the filing fee of \$10 and for the first year's rental, and that the advance rental must be paid by cash, money order, certified check, bank draft or bank cashier's check. <sup>1/</sup> Moreover, examination of the drawing entry card and of the personal check submitted by appellant discloses that each bears the date of September 20, 1972. September 20, 1972, was a Wednesday, a day on which banks and post offices are normally open for the conduct of business. Similarly, the succeeding Thursday and Friday were likewise days on which banks and post offices were open.

The regulation governing the issue here is 43 CFR 3112.2-1(a)(2):

The entry card must be accompanied by separate remittances covering the filing fee of \$10 and the first year's advance rental. The advance rental must be paid by cash, money order, certified check, bank draft, or bank cashier's check. The filing fee may be paid by similar remittance or by uncertified check. (Emphasis supplied).

Under this regulation, oil and gas entry card lease offers accompanied by personal checks for payment of the rental must be rejected. See James W. McDade, 2 IBLA 373 (1971); Chester F. Merriman, A-30033 (March 23, 1964).

As to appellant's plea that the drawing should be permitted to stand in this particular case since he was the successful drawee, the answer is that a regulation promulgated pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181 et seq. (1970), has the force of law. An application which does not comply with the clear and unequivocal requirements of the

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<sup>1/</sup> The large volume of simultaneous filings makes it impossible to insure that all defective offers are screened out before the drawing.

regulations must be rejected. Frank Allison, 3 IBLA 317 (1971). Accordingly, we find that the State Office properly rejected the drawing entry card offer submitted by Simmons.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis, Member

We concur:

Douglas E. Henriques, Member

Frederick Fishman, Member

